

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION

4 THE UNITED STATES OF AMERICA,

5 Plaintiff,

Case No. 11-20129-8

6 -v-

7 VINCENT WITORT, D-8,

8 Defendant.

9 MOTION HEARING

10 BEFORE THE HONORABLE ROBERT H. CLELAND  
11 United States District Judge  
12 Theodore Levin United States Courthouse  
13 231 West Lafayette Boulevard  
14 Detroit, Michigan  
15 July 9, 2014

16 APPEARANCES:

17 FOR THE PLAINTIFF: ERIC STRAUS  
18 U.S. Attorney's Office  
19 211 W. Fort Street  
20 Suite 2001  
21 Detroit, MI 48226

22 FOR THE DEFENDANT: KIMBERLY W. STOUT  
23 Kimberly W. Stout, PC  
24 370 East Maple Road  
25 Floor 3  
Birmingham, MI 48009

ALSO PRESENT: BYRON H. PITTS  
PHILLIP COMORSKI

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Exhibits: (None Offered.)

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1 Detroit, Michigan

2 July 9, 2014

3 2:41 p.m.

4 \* \* \*

5 (Conference in chambers; Defendant not present.)

6 \* \* \*

7 THE COURT: Mr. Straus, good afternoon. Who else do  
8 we have here? Ms. Stout.

9 MS. STOUT: Judge, Kim Stout.

10 THE COURT: Good morning.

11 MS. STOUT: This is Mr. Byron Pitts.

12 THE COURT: Yes.

13 MS. STOUT: And his co-counsel, Phillip Comorski.

14 And this, as you know, is Michael Naughton who is our  
15 technical expert. The reason I brought him is if you had  
16 questions, he actually attended a couple visits of my client  
17 with me. So he is available to answer any -- I just didn't  
18 know what to expect, your Honor, including the fact that he  
19 helped him with the iPad, transferred information, as well as  
20 my offer to withdraw in front of Mr. Naughton, which the client  
21 didn't want me to do.

22 THE COURT: Okay. Well, the reason that we were in  
23 court at all, though the record should reflect that we are in a  
24 conference room off the courtroom here, out of the presence of  
25 the defendant, purely at the request of counsel, collectively,

1 I understood, I certainly want to proceed on the record here.  
2 I'm a little bit uncertain, at least about proceeding in the  
3 absence of the defendant who is waiting I think in custody in  
4 the courtroom. I was simply told that counsel wanted to  
5 briefly meet with me before we, before we proceeded in court on  
6 the record.

7 And the reason that we are here at all is because of  
8 this proposed stipulation of substitution of counsel, more or  
9 less on the eve of trial, after two years of preparation, which  
10 is an extraordinary thing to request. And I wanted to hear the  
11 details of that before I approved it, being satisfied as I am  
12 Ms. Stout's performance thus far.

13 MS. STOUT: Thank you, your Honor.

14 THE COURT: So is there some preliminary matter that  
15 we need to discuss?

16 MR. PITTS: Just a, a caveat to going forward. I just  
17 wanted to let -- for the record, Byron Pitts.

18 I understand the lateness of our request to come into  
19 the case and the potential issues it might bring up if we were  
20 allowed in or not allowed in.

21 In speaking with Ms. Stout, I just wanted to let the  
22 Court know that if, we would have no problem working with Ms.  
23 Stout, if the Court saw fit to allow us in the case and saw fit  
24 to keep her in the case. We have been -- that's all I wanted  
25 to say. I'm not sure if that's even on the radar of the Court.

1 But I wanted to let the Court know that is something that  
2 amongst ourselves, we would not have a problem with, ultimately  
3 understanding that the final decision is yours. But that's  
4 all. That's it.

5 THE COURT: Okay. Well, of course that is a matter to  
6 be -- that could be I think as easily repeated and probably  
7 should be repeated --

8 MS. STOUT: Okay.

9 THE COURT: -- in the presence of defendant. It  
10 wouldn't come as a surprise to him, in any event, I would  
11 imagine.

12 I think we should just assemble in court and we will  
13 have a discussion of the predicates of this, of this request  
14 and the advantages and disadvantages. And I'll see what I make  
15 of it.

16 I'm entirely uncertain fundamentally as I indicated  
17 earlier, because of the lateness of the hour. But let's  
18 reassemble in court, and we'll just terminate this record for  
19 the moment. And I'll have everybody have a chance to make a  
20 statement, as appropriate, when we reassemble in court.

21 Thank you.

22 (Conference in chambers concluded, 2:45 p.m.)

23 \* \* \*

24 (Call to Order of the Court; all parties present.)

25 THE CLERK: Calling case No. 11-20129. The United

1 States of America vs. Vincent John Witort. Counsel, please  
2 state your appearances for the record.

3 MR. STRAUS: Good afternoon, your Honor. On behalf of  
4 the United States, Eric Straus, Assistant United States  
5 Attorney.

6 MS. STOUT: Good afternoon. Kimberly Stout on behalf  
7 of Vincent Witort, who is seated to my left.

8 THE COURT: The matter is -- good afternoon. The  
9 matter is before the Court because of the Court's receipt of  
10 the stipulation for substitution of counsel that was presented  
11 to me some time ago.

12 The proposal is that Ms. Stout, "shall be relieved  
13 from any further responsibility in the above-entitled matter"  
14 and that "Byron H. Pitts and Phillip Comorski shall substitute  
15 as retained counsels in place of Kimberly Stout." And Mr.  
16 Pitts is here, as well as Mr. Comorski. And I recognize their  
17 presence here as well.

18 The defendant is personally present. And at the  
19 request of counsel, I think Mr. Pitts, we conferred briefly in  
20 chambers, although on the record and out of the hearing of the  
21 defendant, at which time Mr. Pitts said the only reason that a  
22 conference was requested in advance of this hearing was to  
23 indicate that, I think the way you put it, Mr. Pitts, was that  
24 you would have no problem in working with Ms. Stout if you were  
25 permitted to be co-counsel, or something similar to that. Am I

1 correct about that?

2 MR. PITTS: Essentially, yes, your Honor.

3 THE COURT: Okay. Thank you.

4 Ms. Stout has been representing the defendant since  
5 what time, Ms. Stout? The commencement of the indictment?

6 MS. STOUT: July 2012 I was appointed, your Honor.  
7 The first visit with my client was the 1st of August in the  
8 Wayne County Jail, of 2012.

9 THE COURT: About a year.

10 MS. STOUT: That's two years.

11 THE COURT: I'm sorry. How time flies. Two years.

12 And the volume of material that you've reviewed over  
13 that, over that time, amounts to approximately what?

14 MS. STOUT: Your Honor, I reviewed my records before  
15 this hearing and made a few notes. I have had approximately,  
16 and I don't want to be stuck to the exact number, 19 visits at  
17 various jails with Mr. Witort, many of which were at Midland  
18 County Jail where he is housed with his iPad. One was at  
19 Dickerson, where he was temporarily housed, and several were at  
20 Wayne County Jail where was first incarcerated.

21 Two of those meetings were attended by Mr. Michael  
22 Naughton, who is here today. He has been court-appointed  
23 technical assistant. He attended two -- one very recent  
24 meeting to make sure the transfer of all my client's notes and  
25 comments to me on the iPad were properly placed on my computer

1 so that I had everything and wouldn't miss anything; I didn't  
2 trust myself enough to do it myself. And the first time was  
3 back in February of this year, where Mr. Naughton wanted to  
4 make sure my client was clear on what he was doing and taught  
5 him some new techniques with the iPad so he could review the  
6 materials better. So that is why I brought him.

7 And just so the Court knows that at that meeting back  
8 in February, which was seven months ago, the issue of whether,  
9 because of Mister -- well, I want to be very careful with the  
10 attorney/client privilege, your Honor. I'm not sure that  
11 there's any real waiver. I'm just going to say that there was  
12 some discussions about, you know, him wanting me to stay, if he  
13 wanted me to withdraw.

14 As far as my review, I reviewed pretty much all of the  
15 25-plus thousand pages that were initially provided. There is  
16 a search technique, so I did not go through them one-by-one.

17 I have searched and searched and searched and I  
18 believe reviewed everything that's pertinent. Obviously in a  
19 RICO, you can't say that nothing isn't, but I think the Court  
20 understands.

21 Further, we got a new CD with 7,200 pages that I  
22 picked up last week and have already perused and found what I  
23 felt to be most important to my client.

24 As far as the Jencks, which we have not received yet,  
25 which I understand to be 3,500 pages, your Honor, I have had



1 three meetings with the U.S. Attorney, Mr. Straus and Ms.  
2 Mohsin. And I'm not sure if the agent -- yes, and the agent  
3 was attendant at some of those, Agent Flemings, because I was  
4 provided courtesy of reviewing the Jencks as early as a year  
5 ago. Part of the reason was a request by me, the Government's  
6 willingness to be open and understanding that names wouldn't be  
7 revealed and they were redacted, that sort of thing. And also,  
8 so that we could logically and reasonably discuss plea, if  
9 there's any possibility of a plea negotiation. So those  
10 meetings included plea negotiation conversations, as well as my  
11 review of Jencks. So I really have a handle on this case, to  
12 say the least.

13 I've also brought with me, because I know my client is  
14 a little concerned about communication, this is one of two  
15 files of correspondence and e-mails between my client, his  
16 brother, Paul Witort, who you had met, your Honor, because he  
17 testified at the bond hearing, the older gentleman, my constant  
18 communication through what my client told me was the liaison,  
19 who was Paul Witort.

20 Obviously, nothing about the details of discovery were  
21 discussed, your Honor, because it's protected, but just  
22 procedure, parameters, in case my client -- because my client  
23 talked to him regularly. And some of that, of course, is  
24 e-mail between counsel and the Government, not just the client.  
25 But there's two of those, and there's a lot of it.

1           So I've also learned the systems, you know, that Emma  
2 has provided us. I'm having a little trouble with Case Manage.  
3 And I'm going to have another instruction on that, if need be.  
4 Though, I may not be.

5           THE COURT: That's a program that you're talking?

6           MS. STOUT: That's a program that helps us, she has  
7 all -- she will have all 35,000 pages on that. Right now,  
8 there should be the 25 plus the 72. Even though the 25 and 72  
9 are already searchable, on Case Manage, it's even a more  
10 powerful way to search because it itemizes things, warrants,  
11 you know, lab reports, that way, making it a lot easier. And  
12 again, I hope I'm not waiving -- I don't want to waive anything  
13 that -- I don't think that's anything to be concerned about.

14          THE COURT: No.

15          MS. STOUT: Okay. So in terms of my preparation, your  
16 Honor, I have invested a lot in this case. And as you know --

17          THE COURT: About roughly how many hours? Have you  
18 totalled that up?

19          MS. STOUT: I didn't total the hour. I've kept -- I  
20 just recently went over my budget. My budget was \$35,000, your  
21 Honor, that I proposed to this Court. I know I spoke with Mr.  
22 Rants at great length when I developed that budget. I know  
23 some attorneys are right around there, and some attorneys are  
24 more. I don't know their details.

25          I have stuck within that budget that was meant for a

1 year for nearly two years. Now, I am over it. But part of the  
2 reason is because trial is at our heels. And I have set out a  
3 lot of time to get ready for this case, your Honor. So that's  
4 why I had the time to go over these CDs recently and, you know,  
5 that was part of my plan in my mind. That's how -- you know,  
6 I'm a private practice. It's just me. So I turned away some  
7 business in order to clear this, to be ready and available for  
8 this.

9 I also discussed an issue you had brought up at one of  
10 the pretrial about having buddies or joint defense agreements  
11 didn't go over too well, but having buddies, if you're going to  
12 be late, that sort of thing. And I talked about that with  
13 Jerry Sabbota and me, and Patty Maceroni kind of, you know,  
14 watching out for each other, that sort of thing.

15 So finally, your Honor, I got so far as to prepare my  
16 closing argument, because I learned from Mr. Fink early on,  
17 back 29 years ago that, you know, if you want to understand,  
18 you have to understand the case to start developing your  
19 closing argument so you know where you've got to get to if you  
20 want to be able to argue that. So am I prepared? Yes, your  
21 Honor, I am very prepared.

22 THE COURT: There's, there's no indication of any  
23 conflict that's come to my attention.

24 MS. STOUT: There -- conflict of interest? Or  
25 conflict with my client?

1           THE COURT: The kind of conflict that sometimes  
2 arises -- no, not conflict of interest. A conflict between  
3 counsel and client, so-called irreconcilable differences, the  
4 kind of language that we used to hear before the era of  
5 no-fault divorces. Irreconcilable differences that have lead  
6 to a complete breakdown of communication, such that counsel  
7 cannot effectively represent the client and things of that  
8 sort. No hint of that throughout any of these proceedings with  
9 respect to you and Mr. Witort, that I'm aware of.

10           Is there -- have I missed something in that regard?

11           MS. STOUT: To be completely honest with you, your  
12 Honor, you know, my client and I have had some difficulties,  
13 which is part of the reason Mr. Naughton is here. And again,  
14 you know, he's upset. Obviously, he's been incarcerated for  
15 two years and misses his family, and so we've had a few words.  
16 And he doesn't always think that my strategy, which I've shared  
17 with him is, is maybe the same strategy he wants to use, for  
18 instance, in certain stipulations and things like that. I  
19 would not say that it's insurmountable by any means.

20           Like I said, I did offer at one point to, not at one  
21 point, several points to withdraw, only because he seemed  
22 upset. But as a CJA counsel, and having done this for so long,  
23 I generally get along very well with my clients. But there is  
24 occasions where it's a little bit stressed, and that's part of  
25 my job, I feel, and I've done my best. So I did not believe

1 that and was quite surprised to learn of -- I got call from Mr.  
2 Pitts out of the blue, quite frankly. So I know Mr. Pitts is  
3 an incredibly competent lawyer. I have respect for him, but I  
4 did not know.

5 THE COURT: Mr. Pitts, is there anything you want to  
6 add to the record?

7 MR. PITTS: Your Honor, I think with the Court's  
8 permission, we'd like to have the opportunity to possible reply  
9 to the Government's objection to us getting in the case, if we  
10 could respond at that time?

11 THE COURT: I'm not sure that they've objected  
12 exactly. The Government has suggested to me the standards, and  
13 I think those standards are fairly well recognized. Especially  
14 in cases where there's an allegation of a conflict,  
15 irreconcilable, or nearly so.

16 The timeliness of the motion to substitute attorneys  
17 is significant. The extent of the conflict, the nature of the  
18 conflict, the nature of the lack of communication, if there's  
19 any suggested -- none has been suggested thus far to me. But  
20 the public has an interest in the prompt and efficient  
21 administration of justice. And I think that there should be a  
22 presumption in favor of maintaining the status quo, unless  
23 there's a reason to deviate from it. I think we should not be,  
24 as a general matter, jumping around from attorney to attorney  
25 in the process of the case, in any case needlessly.

1           A fair amount of public funds have been expended in  
2 providing representation in preparation for Mr. Witort over the  
3 past couple of years, beyond \$40,000 at this point.

4           One question that arises in my mind is whether, in the  
5 prospect of retaining counsel, he apparently has found  
6 resources beyond the \$500 a month Social Security benefit that  
7 he claimed under oath in applying for publicly-funded counsel  
8 originally. So apparently he has located other funds to hire  
9 counsel now, to retain substitute counsel. And I wonder aloud  
10 in that regard whether he is prepared to reimburse the Court  
11 for the roughly \$40,000 of funds that have already been  
12 expended in providing a defense for him.

13           What do you think about that, Mr. Pitts?

14           MR. COMORSKI: Your Honor, Phillip Comorski.

15           THE COURT: Are you proposed first chair then, Mr.  
16 Comorski?

17           MR. COMORSKI: No. I was just going to respond to the  
18 Court's concerns about public funds being reimbursed.

19           I just want the Court to be aware that third parties  
20 on behalf of Mr. Witort reached out to us and hired us,  
21 potentially sought to hire us. It was not Mr. Witort on his  
22 own.

23           THE COURT: So did that third party propose that the  
24 public funds that have been expended be reimbursed in  
25 satisfaction of Ms. Stout's performance thus far?

1 MR. COMORSKI: No.

2 THE COURT: So that's not a first step that was  
3 suggested?

4 MR. COMORSKI: No.

5 THE COURT: Okay. So, Mr. Pitts, do you think you can  
6 prepare a defense and do, in the course of perhaps 60 days,  
7 what Ms. Stout has taken two years to accomplish?

8 MR. PITTS: May it please the Court, your Honor.  
9 Certainly, we believe we can. There will be two of us working  
10 on the case, if Mr. Comorski and I are allowed in. We are  
11 familiar with the volume. Obviously because there's a  
12 protective order, we don't know the details of what's in the  
13 discovery material, but we are aware of the volume and we're  
14 prepared to go forward.

15 THE COURT: Are you aware of any suggestion of  
16 conflict between present counsel that rises to a recognizable  
17 level, Mr. Pitts?

18 MR. PITTS: Your Honor, in light of the fact that,  
19 without getting into conversations I've had with Mr. Witort, I  
20 have been made aware that he is now casting no aspersions on  
21 Ms. Stout. I know she's an excellent attorney, but he is  
22 unhappy with some of the things that have been done by present  
23 counsel. So I'm not sure if that rises -- I know that's an  
24 issue with him and her.

25 I am not really in a position to intelligently

1 analyze, you know, whether or not -- because I wasn't there, I  
2 wasn't in court, and I've just gotten here, whether or not  
3 everything is -- I'm not **intelligently** analyze the issues, the  
4 strengths and merits of the complaints, but I know he's unhappy  
5 about what's gone on.

6 He's indicated through other members of his circle,  
7 not him, he's indicated he would like to retain somebody else.  
8 Other members of his circle, friends and family have gathered  
9 the funds for us. So whether or not that rises to a level of  
10 conflict sufficient for the Court, I am not -- I don't know.

11 THE COURT: What, to the both of you, I ask what role  
12 does the Court play and what obligation does a proposed  
13 substitute counsel have to reveal enough to the judicial  
14 tribunal to ensure that the source of funds for the  
15 representation, not being the defendant's own funds, do not in  
16 and of themselves indicate a conflict of interest or other  
17 similar ethical problem? What obligation do counsel have and  
18 what obligation does the Court have? What do we know about  
19 that?

20 Mr. Comorski?

21 MR. COMORSKI: I guess I don't understand the  
22 question, your Honor. Are you asking --

23 THE COURT: How is it that the Court can be assured,  
24 let me put it more bluntly, that the funds are derived from  
25 someone who has an interest adverse to that of Mr. Witort?



1 MR. COMORSKI: Oh, I see. I suppose we could get  
2 affidavits from the persons involved and submit them to the  
3 Court for the Court's review. That would be one option, of  
4 course.

5 THE COURT: Perhaps. What does the law say about any  
6 obligation that counsel may have or that the Court may have to  
7 look into such matters?

8 MR. COMORSKI: I'm not aware of any such law, your  
9 Honor.

10 THE COURT: How many federal capital-level offense  
11 defenses have you participated in, Mr. Comorski?

12 MR. COMORSKI: Myself? None. I've done appellate  
13 work.

14 THE COURT: And Mr. Pitts, what about you?

15 MR. PITTS: If I can, I'm counting. I'd say about  
16 three, your Honor. I did a federal death penalty case in front  
17 of Judge Victoria Roberts. I'm presently involved in a similar  
18 case, a RICO-related motorcycle club case in front of Judge  
19 Borman presently.

20 THE COURT: When is that going to trial?

21 MR. PITTS: January 24th.

22 THE COURT: And you have nothing on your schedule  
23 between now and then?

24 MR. PITTS: I have a trial in Wayne County Circuit  
25 Court. I do have things on my schedule, your Honor, but I'm

1 prepared -- I don't have any trials set other than a trial set  
2 in July.

3 THE COURT: This is July.

4 MR. PITTS: Understood. I have another trial in Wayne  
5 County Circuit Court set two weeks from now, capital case. I  
6 have a -- no, strike that. It's not a capital case.

7 I have two trials in this building which are set for  
8 trial, which I do not think are going to go. A case in front  
9 of Judge Drain, a narcotic case, I don't think it's going to --  
10 I don't think my client is going to go to trial on that. And  
11 another case, which has not -- in front of -- no. I don't have  
12 any other trials set, other than the one in front of Judge  
13 Drain, which I do not believe is going to go forward, and a  
14 capital case in Wayne County Circuit Court set in a couple of  
15 weeks. Strike that. If I said "capital" it's not capital  
16 case.

17 THE COURT: Okay. By capital in Michigan, what we  
18 mean is life imprisonment max.

19 MR. PITTS: Understood, your Honor.

20 THE COURT: All right. Thank you. At least that's  
21 what I --

22 MR. PITTS: I represented this individual on a capital  
23 case, and this is something else.

24 THE COURT: All right. Okay. Thank you.

25 Mr. Straus, for the Government, you filed a brief to

1 assist the Court. Does the Government actually have a position  
2 in this regard?

3 MR. STRAUS: Obviously, after hearing Ms. Stout,  
4 there's obviously far more here in terms of what she has done  
5 on behalf of Mr. Witort than, you know, the prosecution can  
6 imagine. I know that Ms. Stout has met with us several times.

7 It just strikes the Government that it would almost be  
8 impossible to replicate what she has done thus far to get Mr.  
9 Pitts and his co-counsel to where Ms. Stout is here today. I  
10 find it inconceivable that he could be ready in, in two months.  
11 And I think under the case law, in the interest of efficiency,  
12 the Court should certainly deny that request for substitution  
13 of counsel.

14 I also note, to put on the Court's radar and mentioned  
15 it, the authority for seeking reimbursement is 18 USC, Section  
16 3006A. That is the Criminal Justice Act of 1964, subpart (F).  
17 And it does not differentiate between the defendant's own funds  
18 or funds "on behalf of a person who is furnished  
19 representation."

20 If the Court were to require deposit in the Treasury  
21 of that 40 some thousand dollars, I'm assuming that whatever  
22 the source, and it's -- whatever the source is, it's not an  
23 inexhaustible funding source. I can well imagine at some point  
24 in time prior to trial a realization that that source has dried  
25 up and we would be back here asking for either new counsel, or

1 for the appointment of Mr. Pitts and his co-counsel to be CJA  
2 attorneys, and so, or worse yet, new counsel. So I don't know  
3 how -- I just put that on the Court's radar, all of which I  
4 think raises some issues, some substantial issues.

5 And I think also, I think the Court is right. I think  
6 there should be some inquiry as to the source of these funds.  
7 There is, after all, a forfeiture provision in this particular  
8 matter. It hasn't come up on in the Court's radar because most  
9 of the defendants have filed affidavits of indigency, and so  
10 there's been no need to conduct, it's not a Nebbia hearing, but  
11 it's a hearing akin to that, to determine the source of the  
12 funds for the attorney representation, to ensure that they are  
13 not illegal funds. So those are the court -- the Government's  
14 observations, your Honor.

15 THE COURT: Thank you, Mr. Straus.

16 With that, I'm going to ask for a -- I'm going to  
17 allow an opportunity, as Mr. Pitts suggested earlier, for him  
18 to file a response commensurate with the length of the  
19 Government's filing here, which is not specifically in  
20 opposition, but now I think with the additional information  
21 provided, I interpret as being essentially in opposition to  
22 changing horses here in midstream at this time, so close to  
23 trial, after the amount of work that Ms. Stout has done.

24 So if the object of the proposed stipulated  
25 substitution is still sought, if the goal is still sought, that

1 is to substitute counsel, then I would direct proposed  
2 substitute counsel to file a paper, presumably under seal,  
3 explaining the situation, laying out as specifically as may be  
4 deemed appropriate the funding source information, allaying any  
5 concern that any observer might have to the possibility of  
6 conflict. Explaining the sufficiency of the funding going  
7 forward to allay the concern that Mr. Straus has mentioned  
8 here, that is, the source of funds becoming exhausted mid-trial  
9 and giving rise to the need for additional Criminal Justice Act  
10 funding to support a legal defense on to the conclusion of the  
11 matter. And explaining in more detail than has been done thus  
12 far about how in the world an attorney, or even a pair of  
13 attorneys could, given the time constraints of other pending  
14 business and other pending trials, replicate the work that has  
15 been done by one attorney in the course of 24 months in a mere  
16 60 days, and still provide adequate representation, sufficient  
17 to meet a *Strickland* standard, if challenged upon trial and  
18 conviction, if that were to be the case.

19 I'm concerned, in other words, as a fundamental matter  
20 underlying all of this, that to allow substitute counsel in at  
21 this point, no matter how well experienced he or she may be,  
22 and to essentially force the continuation of trial with the  
23 massive amount of work that is necessary for preparation would  
24 be to set up, first, well, first of all, to set up the  
25 defendant for failure, so to speak, because of inadequate time

1 for preparation. Or if not that, to set up a 2255 petition  
2 post-conviction with, with at least the allegation, if not the  
3 reality of ineffective assistance due to insufficient time for  
4 preparation. There is, there is an absolutely inherent and I  
5 think unavoidable problem in that regard, probably unavoidable.  
6 But I remain to be perhaps persuaded.

7 If you'll file that by Friday, I'll look at it, Mr.  
8 Pitts. And thank you. I have nothing further.

9 Ms. Stout, you have something further. Ms. Stout?

10 MS. STOUT: I'm sorry, your Honor, just two quick  
11 things. I'm very hesitant in what my role should be at this  
12 point in terms of work, because things keep coming in and  
13 e-mails keep crossing my computer. And there's 7,200 pages  
14 there. And there's things I think my client should have.

15 THE COURT: I think that you should, you should  
16 continue to perform, having not been relieved of any  
17 responsibilities at this point. You are counsel of record, and  
18 so you remain unless and until I order otherwise.

19 MS. STOUT: Okay. And one last thing, your Honor.  
20 Thank you for that clarification. One last thing is I know  
21 that, and I'll just say it again here, because it's come up so  
22 many times with respect to Mr. Witort, is his concern for a  
23 speedy trial. And I believe that one of his, his, his concerns  
24 I believe I, I did sign the first stipulation, and after that,  
25 I believe I filed a notice for speedy trial. And as your Honor

1 knows, I filed a bond motion with an alternative for dismissal  
2 because of speedy trial issues. I know that there is some, I  
3 don't know if that is a conflict between us about that very  
4 initial adjournment or not, but I just thought I should bring  
5 that to the Court's attention, because he has specifically  
6 mentioned --

7 THE COURT: Well, for the benefit of your client, I  
8 can assure you that the adjournment would have been granted  
9 with or without his consent, because of the complexity of the  
10 trial. This case has been designated by judicial determination  
11 as an exceedingly complex case.

12 It's, it's obvious that the lengths we've gone to  
13 provide this information, for example, to defendants, including  
14 this one, is almost unheard of. It's exceedingly rare, let's  
15 just put it that way, exceedingly rare. The number of  
16 defendants, the number of defense attorneys, the staffing  
17 support that has been required, the attorneys they've had to  
18 bring in, one of whom his name escapes me now. Mister?

19 MR. NAUGHTON: Naughton, your Honor.

20 THE COURT: Naughton, who has been brought in not as  
21 an attorney but as a technical advisor, at the request of  
22 multiple number of attorneys who are not as adept as others may  
23 be with respect to operating an iPad, or searching files,  
24 optimizing PDFs and things of that sort. The complexities of  
25 this case have been remarkable.

1           This case would have been continued with or without  
2 your stipulation, Ms. Stout, or your client's agreement. If he  
3 had disagreed and vehemently objected and said to the contrary  
4 at the initial opportunity to agree with a substitution -- with  
5 a continuation, it would have been continued. Of course you  
6 know that. I'm stating this for his benefit here, because here  
7 he is listening.

8           All right. Anything else, Ms. Stout?

9           MS. STOUT: No.

10          THE COURT: I intend to have this matter decided  
11 rapidly, so that you'll have -- you'll know whether you are  
12 either continuing or not continuing. And I'll take Mr. Pitts'  
13 comments by Friday noon, please. All right?

14          MS. STOUT: Thank you, your Honor.

15          THE COURT: That's all. Thank you.

16          MR. PITTS: What was the last thing you said? You'll  
17 take my comments by?

18          THE COURT: Friday noon.

19          MR. PITTS: By Friday at noon.

20          THE COURT: Noon time.

21          MR. PITTS: Okay.

22          THE COURT: As opposed to midnight. Okay.

23          MR. PITTS: Thank you.

24          THE CLERK: All rise. Court is now in recess.

25               (Proceedings adjourned at 3:15 p.m.)



\* \* \*

**CERTIFICATE OF REPORTER**

As an official court reporter for the United States District Court, appointed pursuant to provisions of Title 28, United States Code, Section 753, I do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

s/ Christin E. Russell

CHRISTIN E. RUSSELL, RMR, CRR, FCRR, CSR

Federal Official Court Reporter